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be an assignment of the fund, or some definite portion of it, or an order on the person owing the money to the drawer, or holding funds belonging to him, so that the person owing the debt or holding the fund on which the order is drawn can safely pay the order, and is compellable to do so though forbidden by the drawer.

4. **MECHANICS' LIEN**—*Public buildings.* A mechanics' lien cannot be claimed against public buildings erected by the State, or cities, or counties, for public purposes.

5. **LIENS**—*Furnishing materials for public buildings.* Furnishing materials to be used by a contractor in the erection of a public improvement for a city, which materials are so used, does not give any lien on the fund due by the city to the contractor.

6. **WRIT OF FIERI FACIAS**—*Lien on property not capable of being levied—Percentage due a contractor.*—A writ of *fieri facias* against a contractor is a lien upon the amount due him by a city for work done between the date the writ was placed in the hands of an officer to be executed and the return day of the writ, although the amount be a *per cent.* of the contract price reserved as security for the completion of the work, and is not payable until the work is completed. If the work is subsequently completed the lien may be enforced.

HARMAN v. STEARNES.—Decided at Wytheville, July 8, 1897. Rehearing July 22, 1897.—*Keith, P.*

1. **FOREIGN JUDGMENTS**—*Bankruptcy proceeding—Considered as a whole—Collateral attack.* The record of the proceedings of a district court of the United States showing that a commission in bankruptcy made in 1801 was vacated in 1830 must be read as one entire and connected suit, and is admissible in evidence in the courts of this State to show that the adjudication in bankruptcy should be disregarded. The judgment of that court cannot be attacked collaterally.

2. **DEEDS OF RELEASE**—*How far effectual—Grantor not in possession.* Under the provisions of sec. 2439 of the Code a release deed is effectual to convey all the right, title, and interest of the grantor in the premises released, whether he were at the time in the possession of the premises or not.

3. **DEEDS**—*Recitals—Grantor a widow.* The recital in a deed made in 1851 that the grantor therein is a widow will be accepted as true in the absence of evidence to the contrary, although it appears from a will under which she claims title that she was a married woman in the year 1804.

4. **DEEDS BY COMMISSIONER OF COURT**—*Departure from directions—Subsequent confirmation by court.* Although a deed made by commissioners of a court is not in exact accordance with the directions of the court, yet it is immaterial where it appears that they reported their action to the court and it confirmed the deed.

5. **DELINQUENT LANDS**—*Redemption—Certificate of auditor as to payments—Presumption as to who redeemed.* The certificate of the auditor of public accounts showing the payment of money for the redemption of lands returned delinquent for the non-payment of taxes for the years 1796, 1797 and 1798 is admissible in evidence as tending to show redemption of the land from forfeiture, and the fact of the payment and the receipt of the money by the Commonwealth, in the ab-

sence of evidence to the contrary, is sufficient evidence of the fact that the payment was made by or for some one entitled to redeem the land.

6. EJECTMENT—*Lands excepted from grant—Burden of proof—Case at bar.* The burden of proof is on the plaintiff in ejectment to show that the land claimed by him is not within the reservation of the grant from the Commonwealth under and through which he traces his title. He must recover upon the strength of his own title. In the case at bar one of the deeds under which the plaintiff claimed excepted all lands which had theretofore been aliened by him and which were not then in his possession. Hence it was necessary for the plaintiff to show that the land sued for had not already been aliened by such grantor at the time of his conveyance. The evidence of a witness that he was acquainted with the tract and that he knows that large parts of it had been in the actual possession of said grantor and those claiming under him since the year 1856, and were still in his possession, was not of itself sufficient to justify a finding for the plaintiff.

BOYD AND OTHERS v. CLEGHORN AND OTHERS.—Decided at Wytheville, July 8, 1897.—*Harrison, J.—Cardwell, J., dissenting:*

1. APPEALS—*Correct decree—Wrong reasons assigned.* If the decree of the trial court is right, this court will affirm it, though it does not approve the reasons assigned by the trial court.

2. SPECIFIC PERFORMANCE—*Parol contract for sale of land—Statute of frauds—Evidence.* Notwithstanding the statute of frauds courts of equity, in order to defeat a fraud, will compel the specific execution of a parol contract for the sale of lands if the contract is established by clear and convincing proof. In the case at bar the evidence is not of that clear and convincing character necessary to entitle appellants to the relief sought.

GARY v. ABINGDON PUBLISHING COMPANY.—Decided at Wytheville, July 8, 1897.—*Keith, P.:*

1. PLEADING—*Declaration—Contract and tort—Misjoinder.* A declaration which contains one count to recover damages for breach of a contract, and another to recover damages for a tort—trover and conversion—is bad on general demurrer. There is a misjoinder of causes of action, and it is immaterial that the separate counts may be respectively perfect in themselves.

PENN AND OTHERS v. HEARON.—Decided at Wytheville, July 8, 1897.—*Cardwell, J.:*

1. CHANCERY PLEADING—*Suit by assignor for benefit of assignee.* The assignor of a chose in action, secured by a vendor's lien reserved on real estate, cannot sue in equity for the benefit of his assignee to enforce the lien. The assignment carries no interest in the land. The complainant in equity must be the party owning the beneficial interest.

RADER AND OTHERS v. BRISTOL LAND CO. AND OTHERS; BISHOP AND OTHERS v. SAME.—Decided at Wytheville, July 8, 1897.—*Riely, J.:*

1. CHANCERY JURISDICTION—*Multifuriousness—Fraudulent representations—Parties.* A number of persons who have been fraudulently induced to enter into